CF0000057486

(2)

CrA 795/89

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 793 of 1989

Appellant (In jail) :- Smt. Kadti Gurbo widow of Guddi Muria aged about 30 years resident of Bengloor Ayatupara P.S. Kuakonda District Bastar (M.P)

Versus.

Respondent :- The State of M.P.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE :

7604

23-5-89
Bench Directed

YOGENDRA SINGH KANWAR

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Date: 2025.02.20 13:02:07 +0530

**HIGH COURT OF CHHATTISGARH : BILASPUR**

**Criminal appeal no. 795 of 1989**

**Single Bench:- Hon'ble Shri Justice Dhirendra Mishra**

**Appellant :- Smt. Kadti Gurbo**

**Vs.**

**Respondent :- The State of C.G.**

**Appellant by Shri Utkarsh Verma, Advocate.**
**Respondent by Shri Vinod Shrivastava, Govt. Advocate.**

**J U D G E M E N T**
**(Delivered on 23/06/05)**

The appellant has preferred this criminal appeal under Section 374(2) of the Code of Criminal Procedure as the appellant has been convicted under Section 304(II) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years.

2. The case of the prosecution in brief is that the incident took place on 25.11.1986 at about 3.00 pm at village Begloor. The report of this incident was lodged on 26.11.1986 at about 11.30 am in police outpost Katekalyan by Kadti Budhu. According to the FIR the daughter-in-law of the complainant informed the complainant that the appellant has killed the deceased with axe and the body of the deceased is lying in his thrashing field whereupon the complainant went to the house of his brother and found the dead body lying on the thrashing filed. On being asked from the appellant she said that while she was breast feeding her child, the deceased came and demanded meal and when she told that she will serve him meal after breast feeding, the deceased assaulted the appellant twice by kicks and snatched the child as a result of which she took the axe lying nearby and assaulted the deceased. The appellant confessed in the presence of Sarpanch- Magdu Hando, Kotwar-Kamlu and other villagers that she murdered her husband and the incident was seen by Kadti Torko P.W.3 and Markami Jogi P.W.4. On the basis of Ex.P/12 merg intimation was registered and accordingly FIR of Ex.P/13 was registered in Police

Station-Kuwakonda and merg registered as per Ex.P/14 by the said Police Station. The matter was investigated by the Head Constable Lekhdhar Dhiwan and he prepared the inquest report of Ex.P/5 upon the dead body at the place of incident on 26.11.1986 and on the same date sent the dead body for postmortem. The postmortem report is Ex.P/15. The Investigating Officer seized ordinary and bloodstained soil from the place of incident and a white dhoti vide seizure memo of Ex. P/6 and thereafter recorded memorandum of the appellant as per Ex.P/2 and on her disclosure the weapon of offence axe was recovered and seized as per Ex.P/3. On the same date, the bloodstained towel was seized from the appellant as per Ex.P/10 and two sealed packets brought by Constable Ramsai was also seized vide Ex.P/11. The seized towel and axe was sent for chemical examination vide memo of Ex.P/8 and P/9-A. Dr.K.P.Nag of Primary Health Centre, Katekalyan gave his examination report of simple and bloodstained soil and bloodstained towel vide annexure Ex.P/8. The axe was examined by the doctor on 14.12.1986 and the report of the doctor is Ex.P/9. On further investigation chargesheet under Section 302 of the IPC was filed and the learned Judicial Magistrate First Class committed the case to the Sessions Judge, Bastar, Jagdalpur vide order dated 07.02.1987 and the charge under Section 302 of the IPC was framed vide order dated 06.07.1987.

3. During trial the prosecution examined in all 12 witnesses and thereafter recorded statement of accused under Section 313 of the Cr.P.C. The learned trial court disbelieved the version of witness Markami Jogi P.W.4 and relied upon the report of P.W.6 Dr. K.P. Nag that the death of the deceased was homicidal in nature and further relied upon the statement of Kadti Torko P.W.3 and convicted the appellant under Section 304-II of the IPC sentencing her to undergo RI for seven years holding that though the appellant was aware of the fact that by her act the deceased could die but she had no motive to cause death of her husband.

4. Learned counsel for the appellant submits that the Court below has committed illegality by relying upon the statement of P.W.3 as there is material omission which is evident from perusal of the diary statement of Ex.D/3 in which she had stated that peeping through bush she saw that the deceased was assaulting his wife and snatching the child. Learned counsel further argues that the statement of this eyewitness cannot be acted upon as the statement of this witness is not corroborated by the

medical evidence in material particular as this witness has stated in her statement that the appellant assaulted the deceased on his chest from the back side of the axe whereas P.W.6 has categorically stated that the deceased sustained single injury on his leg. The further submission by learned counsel for the appellant is that the Court below ought to have given the right of private defence to the appellant as the deceased assaulted first by kicks and thereafter snatched the breast feeding child from the appellant and thus the appellant apprehending that the deceased could throw her kid out of anger and thereby killed the child, exercised the right of private defence and gave a single blow to non-vital part, the leg, of the deceased.

5. Learned counsel for the appellant further submits that P.W.6 Dr.K.P.Nag has categorically opined that there was no injury on the person of the deceased except a single injury on his left leg behind knee of size 3 x 2 inches and he has stated that there was no injury caused by the back side of the axe over chest or stomach of the deceased otherwise he would have mentioned the same. Relying upon the judgment reported in ***AIR 1980 Supreme Court 1873*** in the matter of ***Purshottam and another Vs. State of Madhya Pradesh***, learned counsel submits that in the murder case where there is contradiction between medical testimony and eyewitness account regarding fatal injuries of the deceased, medical testimony should be preferred and thus, the Court below has committed illegality by relying upon the statement of P.W. 3 as the statement of this witness is not corroborated by the medical evidence.

6. On the other hand, learned counsel for the State submits that even if it is considered that it is a case of single blow, the doctor has categorically opined in his report that the injury caused on the leg was fatal in nature and the same was sufficient to cause death in the normal course. He further submits that the statement as given by the P.W.3 was reliable and has been rightly believed by the trial Court. He submits that even black spots were also found over chest and stomach during preparation of inquest report which is evident from perusal of the inquest report and thus there is no material variance regarding injuries present over the person of the deceased in the statements of the witnesses and the postmortem report.

7. I have heard learned counsel for the parties and have perused the records, statements of witnesses and the impugned judgment of the trial court also.

8. So far as the contention of the appellant that the eyewitness account of the P.W. 3 should be discarded in toto on the ground that in her diary statement she has stated that she saw the incident behind the bush and there is some omission regarding description of the incident in the matter of assault by the deceased and his snatching of child from the appellant, I don't consider that simply on this reason her statement can be discarded completely and this witness should be disbelieved as the discrepancy is minor in nature.

9. As far as the second contention of the appellant that the Court below ought to have extended the benefit under Section 97 of the IPC as the appellant assaulted her husband apprehending that he could cause harm to the child is concerned, taking into consideration the fact that the deceased was not having any weapon with him and he was simply demanding meal so it can not be said that the appellant could have reasonably nourished the apprehension of life of her child.

10. However, considering the circumstances in which the appellant assaulted her own husband and further considering the fact that single blow was given by the appellant to the deceased on his back knee, it cannot be said that she had the knowledge that by such act she could cause death of her husband and thus the finding of the Court below in the impugned order that the appellant assaulted the deceased by axe with the knowledge that she may cause death of her husband is erroneous. The act of the appellant is voluntarily causing hurt by dangerous weapon is punishable under Section 324 of the IPC. Accordingly the impugned judgment of conviction under Section 304-II of the IPC is set aside and the appellant is convicted under Section 324 of the IPC and considering the fact that she is a tribal lady and further considering the circumstances in which the offence has been committed by her and that she has already undergone jail sentence of five months until now, she is sentenced to the jail sentence already undergone by her.

Sd/-
DHIRENDRA MISHRA
Judge